

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.MC.No. 3596 of 2004(D)

LP.171/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,PATHANAMTHITTA

PETITIONER:

MATHAI MATHEWKUTTY, EASWARANPARAMBIL
VEEDU, KONNITHAZHAM VILLAGE,ATHUMBUMKULAM,
KOZHENCHERRY TALUK, PATTHANAMTHITTA.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENT:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

A.K. BASHEER, J.

CRL.M.C. NO. 3596 OF 2004

Dated this the 19th day of February, 2007

O R D E R

Petitioner and one Babu, Son of Mathai were charge sheeted in O.R. No.4/95 by the Deputy Ranger, North Kumaramperoor Forest Station under Section 27 (1) (e) (iii) & (iv) of Kerala Forest Act. The case was taken on file by the Judicial Magistrate of First Class Court II, Pathanamthitta in C.C. No.95/96. The prosecution case in brief was that the petitioner and the other accused had trespassed into Teak Plantation No. 1965 within the limits of Konni Range on 2nd September, 1995 and tried to cut and remove a teak tree worth Rs.1,500/-. According to the prosecution, the accused took to their heels on seeing PWs 1 to 3, leaving behind their tools and the logs of timber.

2. When the case came up for trial before the learned Magistrate, the petitioner, who was arraigned as accused No.1, was absent. Therefore, the case against him was split up and renumbered as C.C. No.505/00, which is now stated to be pending in L.P. No. 171/03 before the court mentioned above.

The prosecution examined PWs 1 to 3 and Exts. P1 and P2 were also marked on its side. After a careful examination of the oral and documentary evidence on record, the learned Magistrate found that accused No.2 who stood trial, was not guilty of the offence alleged against him since the prosecution had failed to prove the charge. Accordingly, accused No.2 was acquitted by judgment dated 24th November, 2000, a copy of which is on record as Annexure I. The prayer in this Crl.M.C. is to quash the proceedings pending against the petitioner in the above case.

3. It is submitted by the learned counsel appearing for the petitioner that the court below had acquitted accused No.2 since the prosecution had totally failed in proving that the alleged offence had taken place within the Teak Plantation belonging to the Government. The prosecution had not produced the notification allegedly issued by the Government in this regard in respect of the said plantation. Learned counsel is justified in making the above submission since the learned Magistrate had specifically referred to the above aspect in Annexure-I judgment. There was no evidence on record to show that the accused had trespassed into the reserve Teak Plantation on the alleged day of

occurrence. It is the settled position of law that unless and until the prosecution establishes that the accused had trespassed into the reserved forest and committed the alleged offence within its limits, no prosecution can be sustained. Reliance is placed on the decision of this Court in **A.M. Antony v. Forest Range Officer** (1997 KLT 691).

Annexure I judgment further shows that the complainant, who had laid the final charge before the court below, was not examined nor was the witness (CW4), who had verified the mahazar, produced before the Court for examination. Similarly, the tools which were allegedly used by the accused for cutting and sawing the tree and which were admittedly recovered from the scene of occurrence, were not produced before the court. The court below had also adverted to the fact that no attempt was made by the officials to apprehend the two accused at any point of time after the alleged incident.

Having carefully perused the judgment and other relevant materials on record, I am satisfied that there is considerable force in the contention raised by the learned counsel for the petitioner and that it will be an exercise in futility if the petitioner

is asked to face trial in the same case and that too, at this distance of time. It may be remembered that the alleged incident had taken place way back in the year 1995. Many of the witnesses who are to be examined may not be available at all as rightly contended by the learned counsel for the petitioner. Having perused the materials on record, I am satisfied that the prayer made by the petitioner in this petition is liable to be allowed and I do so.

Therefore the Crl.M.C. is allowed and the proceedings pending against the petitioner in L.P. No.171/03 arising from O.R. No.4/95 of North Kumaramperoor Forest Station on the file of the Judicial Magistrate of First Class II, Pathnamthitta are quashed.

A.K. BASHEER, JUDGE

vps

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KURIAN JOSEPH, JUDGE

OP NO.

JUDGMENT

21st DECEMBER, 2006